

At least one legislative member has asked to receive legal briefs from our attorneys regarding postponing open enrollment. As you know, communications between an attorney and client are privileged. However, I can tell you that our concern was primarily related to Section 125 of the Internal Revenue Code.

OGB plan participants are allowed to pay for their share of the cost of coverage under the plan on a pre-tax basis through use of a Section 125 cafeteria plan. Through that plan, participants can make pre-tax contributions to accounts such as health care flexible spending accounts and health savings accounts to pay for unreimbursed medical expenses like co-pays and deductibles.

Under Section 125, the plan year of a cafeteria plan must be 12 consecutive months, unless a short plan year is allowed. Because OGB's plan year is the calendar year, we could not postpone open enrollment to the next calendar year. Doing so would cause the plan to fail the requirements of Section 125 to have a maximum 12-month plan year. As a result, the cafeteria plan could lose its status under Section 125 and the pre-tax benefits of premium payments and contributions to these accounts could be lost.

Ultimately, OGB determined that, as long as it had a fall enrollment period, it could allow participants to make their cafeteria plan elections for January. Separately, OGB determined that it could switch its medical and pharmacy plan options in March without any legal concerns.